

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

UNITED STATES OF AMERICA )  
                                )  
                                ) Case No. 1:08CR00023  
                                )  
v.                            )  
                                ) **OPINION AND ORDER**  
                                )  
**ANTHONY R. MILLER and**     )  
**CATHERINE MILLER,**         )  
                                ) By: James P. Jones  
                                ) United States District Judge  
                                )  
Defendants.                 )

*Anthony P. Giorno, Assistant United States Attorney, Roanoke, Virginia, for United States; David L. Scyphers, Scyphers & Austin, P.C., Abingdon, Virginia, for Defendants.*

By judgments entered May 12, 2009, the defendants, husband and wife, were sentenced to imprisonment and ordered to pay restitution to the Social Security Administration.<sup>1</sup> The defendants appealed, and their sentences of imprisonment were stayed. By agreed order of July 2, 2009, the government was permitted to file liens against the defendants' real estate in order to ensure compliance with the restitution order. *See* Fed. R. Crim. P. 38(e)(2).

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<sup>1</sup> Anthony Miller was ordered to pay \$139,262 and Catherine Miller was ordered to pay \$92,495, jointly and severally with Anthony Miller.

The court of appeals affirmed the judgments.<sup>2</sup> The defendants have now moved the court to enter an order allowing them to use the net proceeds from their recent sale of certain real estate instead of paying restitution.<sup>3</sup> The defendants propose to use the proceeds to pay other debts. The payment towards these other debts, they contend, might better allow them to pay the restitution obligation once they are released from prison. They have yet to pay any of the restitution.

Even assuming that I have the authority at this point to interfere with the government's efforts to collect restitution, I would not do so in this case. While I understand the defendants' desire to pay their other debts and to possibly save their home from foreclosure, I would not require the government to forego present payment towards this large restitution obligation, since future payments are far from certain.

For these reasons, it is **ORDERED** that the defendants' Motion (EFC No. 133) is DENIED.

ENTER: November 11, 2010

/s/ JAMES P. JONES  
United States District Judge

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<sup>2</sup> *United States v. Miller*, Nos. 09-4461, 09-4462, 2010 WL 3452771 (4th Cir. Sept. 2, 2010).

<sup>3</sup> According to the parties, the net proceeds from this sale are approximately \$34,000.